IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Criminal Appeal No.842/2006

Juhuru Khan @ Zamil @ Chhote Khan S/o Shri Imam Khan
Versus
State of Rajasthan through its PP

Date of Order ::: 25.4.2007

Present
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Ravi Yadav, Counsel for appellant
Smt. Nirmala Sharma, P.P., for the State
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By the Court:-

The matter is listed for orders on the application for suspension of sentence of the accused-appellant on the ground that the appellant has already remained in jail for about 4 years and 8 months, whereas the total sentence awarded by the trial court is 7 years rigorous imprisonment, but, on the request of learned counsel for both the parties, the appeal itself is heard finally and being disposed of.

The only argument raised by learned counsel Shri Ravi Yadav appearing on behalf of the appellant is about reduction of sentence of imprisonment

passed by the trial court. He has not challenged the impugned judgment of trial court on merits. He contended that the main accused in the case was Ashok Kumar Yadav, and initially FIR No.4/97 under Sections 3 and 3/9 of the Official Secrets Act, 1923, and 120-B of the Indian Penal Code, was registered; subsequently, on the basis of some information received in the matter, another FIR No.1/2000 was registered, wherein challan was filed against 7 accused-persons, namely, Ashok Kumar Yadav, Mohammad Sabir @ Babu Khan, Samsunisha @ Mariam, Fazru, Isab @ Yusuf, Idrish @ Shakir and Molana Abdul Mazid.

After completion of trial in Sessions Case No.110/2000 (arising out of FIR No.1/2000), the learned Sessions Judge, Jaipur City, Jaipur, acquitted two accused-persons, namely, Molana Abdul Mazid and Samsunisha @ Mariam, and convicted five accused-persons, namely, Ashok Kumar Yadav, Mohammad Sabir @ Babu Khan, Fazru, Isab @ Yusuf and Idrish @ Shakir, and sentenced them under Section 3(1)(c) of the Official Secrets Act, 1923, to undergo 4 years and 5 months rigorous imprisonment. They were acquitted under Section 120-B, IPC.

Shri Ravi Yadav, the learned counsel for the appellant further contended that the charge against the accused-appellant Juhuru Khan @ Zamil was that during custody of accused Idrish @ Shakir in same FIR No.1/2000 (Sessions Case No.110/2000), an information was given by accused Idrish under Section 27 of the Indian Evidence Act and in pursuance of that information a diary was recovered at his instance and some information written by appellant Juhuru Khan along with co-accused Isab and Idrish was also available, therefore, appellant was also added as an accused but he was tried separately and convicted by impugned judgment. He, therefore, contended that case of accused Isab and Idrish was similar to that of the case of present appellant Juhuru Khan. He contended that the other accused-persons Ashok Kumar Yadav, Mohammad Sabir @ Babu Khan, Fazru, Isab @ Yusuf and Idrish @ Shakir, were convicted and sentenced under Section 3 of the Official Secrets Act, 1923, to undergo 4 years and 5 months rigorous imprisonment and the case of present appellant is similar to that of the case of co-accused Isab @ Yusuf and Idrish @ Shakir, but because of change of the Presiding Officer, the

appellant has been convicted and sentenced under Section 3 read with Section 5 of the Official Secrets Act, 1923, to undergo 7 years rigorous imprisonment. He, therefore, contended that a similar sentence, i.e. 4 years and 5 months ought to have been awarded against the present appellant also. He contended that the appellant has already remained in jail for about 4 years and 8 months, therefore, his sentence of imprisonment may be reduced to a period of imprisonment already undergone by him.

The learned Public Prosecutor has defended the judgment of the trial court and contended that looking to the gravity of offence, the sentence of imprisonment should not be reduced.

I have considered the submissions of learned counsel for both the parties and examined the impugned judgment as well as the record of the trial court also.

The learned counsel for the appellant has not challenged the order of conviction of the accused-appellant on merits and rightly so in view of overwhelming evidence in the case, therefore, it is not necessary to discuss the prosecution evidence.

The learned counsel for the appellant has shown a certified copy of the judgment dated 7.8.2004 passed by the Sessions Judge, Jaipur City, Jaipur, in Sessions Case No.110/2000, wherein accused-persons Ashok Kumar Yadav, Mohammad Sabir @ Babu Khan, Fazru, Isab @ Yusuf and Idrish @ Shakir, were convicted and sentenced under Section 3(1)(c) of the Official Secrets Act, 1923, to undergo 4 years and 5 months rigorous imprisonment.

So far as offence under Section 5 of the Official Secrets Act is concerned, the maximum sentence of imprisonment prescribed thereunder is 3 years rigorous imprisonment.

The case of the present appellant appears to be similar in nature to that of accused Isab @ Yusuf and Idrish @ Shakir in FIR No.1/2000 (Sessions Case No.110/2000). The so-called diary was recovered as per the information given by co-accused Idrish from his possession, wherein some information written by the accused-appellant, was also available along with other co-accused-persons. In these circumstances, I think it fit and proper to reduce the sentence of imprisonment of the accused-appellant awarded by the trial court and ends of

justice will meet in case the sentence of imprisonment of the appellant is reduced to a period of sentence of 5 years rigorous imprisonment.

Consequently, the appeal is partly allowed. The conviction of the accused-appellant under Section 3 read with Section 5 of the Official Secrets Act, 1923 is maintained, but his sentence of imprisonment awarded by the trial court is reduced to a period of 5 years rigorous imprisonment.

(Narendra Kumar Jain) J.

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